



Tanak Pty Ltd T/A The Waterstop Shop  
ABN 65 368 248 057 - ACN 109 854 695  
20 Dalgety Street, Oakleigh VIC 3166  
Ph (03) 9569 7687 - Fax (03) 9563 0581  
Web www.waterstop.com.au

# CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

DATE: \_\_\_\_\_ REF No. \_\_\_\_\_

CUSTOMER'S TRADE NAME: \_\_\_\_\_

CUSTOMER'S FULL or LEGAL NAME: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

Billing Address: \_\_\_\_\_ Physical Address: \_\_\_\_\_

\_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

## COMMERCIAL CUSTOMERS ONLY

ABN/ACN Number: \_\_\_\_\_

Requested Credit Limit: \_\_\_\_\_ Date Established: \_\_\_\_\_

Contact 1: \_\_\_\_\_ Contact 2: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

## DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company) OR TRUSTEE (If a Trust)

Full Name: \_\_\_\_\_ Full Name: \_\_\_\_\_

Home Address: \_\_\_\_\_ Home Address: \_\_\_\_\_

\_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

ID: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ ID: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
(Driver's Licence, Passport, etc.) (Driver's Licence, Passport, etc.)

Home Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

## TRADE REFERENCES

Business Name 1: \_\_\_\_\_ Address or A/C No: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Business Name 2: \_\_\_\_\_ Address or A/C No: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Business Name 3: \_\_\_\_\_ Address or A/C No: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Tanak Pty Ltd T/A The Waterstop Shop which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.***

SIGNED (CUSTOMER): \_\_\_\_\_ SIGNED (SELLER): \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

## WITNESS TO CUSTOMER'S SIGNATURE:

Signed: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_

# Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Tanak Pty Ltd ATF The Tanak Trust T/A The Waterstop Shop and its successors and assigns ("the Seller") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

\_\_\_\_\_ ("the Customer") [Insert Company Name In Box Provided]

## I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

- GUARANTEE** the due and punctual payment to the Seller of all moneys which are now owing to the Seller by the Customer and all further sums of money from time to time owing to the Seller by the Customer in respect of goods and services supplied or to be supplied by the Seller to the Customer or any other liability of the Customer to the Seller, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with the Seller, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to the Seller the Guarantor will immediately on demand pay the relevant amount to the Seller. In consideration of the Seller agreeing to supply the Goods to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to the Seller registering any interest so charged. The Guarantor irrevocably appoints the Seller and each director of the Seller as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which the Seller may reasonably require to:
  - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - register any other document required to be registered by the PPSA or any other law; or
  - correct a defect in a statement referred to in clause 1(a) or 1(b).
- HOLD HARMLESS AND INDEMNIFY** the Seller on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, the Seller in connection with:
  - the supply of goods and/or services to the Customer; or
  - the recovery of moneys owing to the Seller by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Seller's nominees costs of collection and legal costs; or
  - moneys paid by the Seller with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the Seller, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by the Seller to the Customer.

## I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

- I/We have received, read and understood the Seller's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.
- This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to the Seller by the Customer and all obligations herein have been fully paid satisfied and performed.
- No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Seller's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to the Seller, each Guarantor shall be a principal debtor and liable to the Seller accordingly.
- If any payment received or recovered by the Seller is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Seller shall each be restored to the position in which they would have been had no such payment been made.
- The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
- I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to the Seller.
- I/we irrevocably authorise the Seller to obtain from any person or company any information which the Seller may require for credit reference purposes. I/We further irrevocably authorise the Seller to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Seller as a result of this Guarantee and Indemnity being actioned by the Seller.
- The above information is to be used by the Seller for all purposes in connection with the Seller considering this Guarantee and Indemnity and the subsequent enforcement of the same.

### GUARANTOR-1

SIGNED: \_\_\_\_\_  
FULL NAME: \_\_\_\_\_  
HOME ADDRESS: \_\_\_\_\_  
DATE OF BIRTH: \_\_\_\_\_  
SIGNATURE OF WITNESS: \_\_\_\_\_  
NAME OF WITNESS: \_\_\_\_\_  
OCCUPATION: \_\_\_\_\_  
PRESENT ADDRESS: \_\_\_\_\_  
EXECUTED as a Deed this            day of            20\_\_\_\_

### GUARANTOR-2

SIGNED: \_\_\_\_\_  
FULL NAME: \_\_\_\_\_  
HOME ADDRESS: \_\_\_\_\_  
DATE OF BIRTH: \_\_\_\_\_  
SIGNATURE OF WITNESS: \_\_\_\_\_  
NAME OF WITNESS: \_\_\_\_\_  
OCCUPATION: \_\_\_\_\_  
PRESENT ADDRESS: \_\_\_\_\_  
EXECUTED as a Deed this            day of            20\_\_\_\_

- Note: 1. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).  
2. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

**WARNING: THIS IS AN IMPORTANT DOCUMENT YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT**

# Tanak Pty Ltd T/A The Waterstop Shop – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Seller" means Tanak Pty Ltd ATF The Tanak Trust T/A The Waterstop Shop, its successors and assigns or any person acting on behalf of and with the authority of Tanak Pty Ltd ATF The Tanak Trust T/A The Waterstop Shop.
- 1.2 "Customer" means the person's buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by the Seller to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 4 below.
2. **Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Seller.
- 2.3 All literature, samples, specifications, dimensions and weights submitted with this quotation are approximate only and the data and descriptions contained in catalogues and other advertising material while being as accurate as possible may not necessarily be identical with products and services the Seller supplies, and the Seller reserves the right to supply products that have minor modifications in specifications as the Seller sees fit.
- 2.4 The descriptions, illustrations and performances contained in catalogues, other advertising material and price lists do not form part of the contract of sale of the products.
- 2.5 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Seller reserves the right to vary the Price with alternative Goods as per clause 4.2. The Seller also reserves the right to halt all Services until such time as the Seller and the Customer agree to such changes.
3. **Change in Control**
- 3.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.
4. **Price and Payment**
- 4.1 At the Seller's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by the Seller to the Customer; or
  - (b) the Price as at the date of delivery of the Goods according to the Seller's current price list; or
  - (c) the Seller's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases to the Seller in the cost of taxes, levies, materials and labour) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice.
- 4.3 At the Seller's sole discretion a deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be:
  - (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (d) thirty (30) days following the date of the invoice which is posted to the Customer's address or address for notices;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) falling any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Seller.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and the Seller.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Seller an amount equal to any GST the Seller must pay of any supply by the Seller under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
5. **Delivery of Goods**
- 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
  - (a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Seller's address; or
  - (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 5.2 At the Seller's sole discretion the cost of delivery is in addition to the Price.
- 5.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by the Seller to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Seller will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
6. **Risk**
- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6.3 If the Customer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 6.4 Any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith, is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.
7. **Accuracy of Customers Plans and Measurements**
- 7.1 The Seller shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.2 In the event the Customer gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or Seller places an order based on these measurements and quantities. The Seller accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.
8. **Title**
- 8.1 The Seller and the Customer agree that ownership of the Goods shall not pass until:
  - (a) the Customer has paid the Seller all amounts owing to the Seller; and
  - (b) the Customer has met all of its other obligations to the Seller.
- 8.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.3 It is further agreed that:
  - (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to the Seller on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;
  - (e) the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods;
  - (f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred;
  - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller;
  - (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
9. **Personal Property Securities Act 2009 ("PPSA")**
- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Seller to the Customer.
- 9.3 The Customer undertakes to:
  - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Seller;
  - (e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales;
- 9.4 The Seller and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by the Seller, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Customer must unconditionally ratify any actions taken by the Seller under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
10. **Security and Charge**
- 10.1 In consideration of the Seller agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 10.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.
11. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 11.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Seller in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Seller to inspect the Goods.
- 11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 11.3 The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Customer is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Customer has paid for the Goods.
- 11.7 If the Customer is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Goods is:
  - (a) limited to the value of any express warranty or warranty card provided to the Customer by the Seller at the Seller's sole discretion;
  - (b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
  - (a) the Customer has complied with the provisions of clause 11.1; and
  - (b) the Seller has agreed that the Goods are defective; and
  - (c) the Goods are returned within thirty (30) days of delivery at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
  - (a) the Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by the Seller;
  - (e) fair wear and tear, any accident, or act of God.
- 11.10 The Seller may in its absolute discretion accept non-defective Goods for return in which case the Seller may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 11.11 Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.
12. **Default and Consequences of Default**
- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees).
- 12.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 12.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
  - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
13. **Cancellation**
- 13.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any money paid by the Customer for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 13.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
14. **Privacy Act 1988**
- 14.1 The Customer agrees for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Seller.
- 14.2 The Customer agrees that the Seller may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer.The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 14.3 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Customer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as shall be agreed between the Customer and Seller or required by law from time to time):
  - (a) the provision of Goods; and/or
  - (b) the marketing of Goods by the Seller, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 14.5 The Seller may give information about the Customer to a credit reporting agency for the following purposes:
  - (a) to obtain a consumer credit report about the Customer;
  - (b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 14.6 The information given to the credit reporting agency may include:
  - (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
  - (c) advice that the Seller is a current credit provider to the Customer;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of the Seller, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
  - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Customer by the Seller has been paid or otherwise discharged.
15. **Building and Construction Industry Security of Payment Act 2002**
- 15.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 15.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.
16. **General**
- 16.1 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria in which the Seller has its principal place of business, and are subject to the jurisdiction of the Melbourne Courts in that state.
- 16.3 Subject to clause 11 the Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 16.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because or partly because of that invoice is in dispute.
- 16.5 The Seller may increase or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 16.6 The Customer agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Seller to provide Goods to the Customer.
- 16.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it